

**United States Department of Labor
Employees' Compensation Appeals Board**

D.P., Appellant

and

**DEPARTMENT OF THE NAVY, PUGET
SOUND NAVAL SHIPYARD, Bremerton, WA,
Employer**

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**Docket No. 13-843
Issued: August 6, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2013 appellant filed a timely appeal from a January 28, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than 11 percent loss of hearing in the left ear.

On appeal, appellant contends that he is entitled to more than the amount awarded as the accepted hearing loss was for both ears and affected him permanently.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 30, 2012 appellant, then a 57-year-old planner and estimator, filed an occupational disease claim alleging a permanent hearing loss due to exposure to industrial noise in his employment. He first became aware of his condition and realized that it was caused or aggravated by his employment on February 2, 2000. Appellant retired from the employing establishment in February 2000. Audiograms dated 1969 to 2000 were submitted. The employing establishment stated that appellant was enrolled in the hearing conservation program while employed.

In a May 2, 2012 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, noted appellant's history of noise exposure. He indicated that the audiometry revealed a bilateral high frequency sensorineural hearing loss with speech reception thresholds of 20 decibels (dB) in the right ear and 25 dB in the left ear. Discrimination scores were measured at 52 percent in the right ear and 24 percent in the left ear. Tympanogram was normal. Appellant's hearing loss was compatible with hearing loss due to past noise exposure. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Randolph rated 7.5 percent hearing loss in the right ear and 20.625 percent hearing loss in the left ear or a binaural hearing loss of 9.69 percent. No additional rating for tinnitus was indicated. Dr. Randolph noted that appellant left his federal employment in 2000 and a February 2, 2000 audiogram revealed 0 percent hearing loss in the right ear and 11.25 percent in the left ear, with a binaural hearing loss of 1.88 percent.² He stated that hearing loss due to noise exposure occurs at the time of noise exposure and does not get worse at a later date because of past noise exposure. Dr. Randolph stated that appellant's hearing loss did increase in severity after he left his federal employment resulting in his current ratable hearing loss of 9.69 percent. He also opined that appellant was and still is a candidate for bilateral fitting of appropriate hearing aids.

In an August 21, 2012 letter, OWCP requested that Dr. Randolph review the enclosed statement of accepted facts and provide an addendum to his May 2, 2012 report. On September 17, 2012 Dr. Randolph stated that the 1996 audiogram revealed a bilateral high frequency sensorineural hearing loss with an audiometric configuration compatible with preexisting hearing loss. He stated that, between 1966 and February 2, 2000, the audiograms revealed that appellant's hearing loss increased in severity in those frequencies affected by noise. Appellant left his federal employment in 2000. Dr. Randolph reiterated that hearing loss due to noise exposure occurs at the time of noise exposure and does not get worse at a later date because of past noise exposure. Between the year 2000 and the audiogram performed on April 30, 2012, appellant's hearing loss increased in severity due to factors other than his federal employment. His workplace exposure was of sufficient intensity and duration to have aggravated his preexisting hearing loss. Appellant also opined that there were no other significant contributing factors to his hearing loss other than noise exposure and to some extent the aging process. He stated that there was no indication of any medical condition such as acoustic neuroma or Meniere's disease and that the audiogram reveals hearing loss with an

² The February 2, 2000 audiometric testing revealed hearing levels of 5, 5, 10 and 70 dB in the right ear and 5, 5, 35, 85 in the left ear at hertz (Hz) levels of 500, 1,000, 2,000 and 3,000, respectively.

audiometric configuration compatible with hearing loss largely due to noise exposure and that appellant's hearing loss increased in severity in those frequencies affected by noise exposure during his employment. Dr. Randolph again recommended bilateral hearing aids.

By decision dated September 26, 2012, OWCP accepted appellant's claim for bilateral hearing loss.

On October 2, 2012 appellant filed a schedule award claim.

On January 3, 2013 OWCP referred the case file a medical adviser to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

On January 17, 2013 OWCP's medical adviser reviewed the audiograms of record and noted that the February 2, 2000 audiogram was closest to the date of appellant's federal retirement. It was used for calculation of hearing loss because hearing loss due to noise exposure occurs at the time of noise exposure and does not get worse at a later date because of past noise exposure. The medical adviser applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* to determine that appellant sustained 0 percent right monaural loss, 11.25 percent left monaural loss and 1.88 percent binaural loss. He averaged appellant's right ear hearing levels of 5, 5, 10 and 70 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 90 and averaged 22.5. The medical adviser then subtracted the 25-dB fence and multiplied by 1.5 to find 0 percent right monaural hearing loss. He then averaged appellant's left ear hearing levels of 5, 5, 35 and 85 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 130 and averaged 32.5. After subtracting out a 25-dB fence, the medical adviser multiplied the remaining 7.5 balance by 1.5 to calculate a 11.25 percent left monaural hearing loss. He then calculated 1.88 percent binaural hearing loss by multiplying the lesser right ear loss of 0 percent by 5, adding the greater 11.25 percent left ear loss and dividing this sum by 6. The medical adviser concluded that hearing aids were authorized and the date of maximum medical improvement was February 2, 2000.

By decision dated January 28, 2013, OWCP granted appellant a schedule award for 11 percent monaural hearing loss in the left ear. The award covered a period of 5.72 weeks from February 2 to March 13, 2000. Appellant's weekly pay was computed at the 75 percent augmented rate for employees with dependents.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*

³ 5 U.S.C. § 8107.

has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz the losses at each frequency are added up and averaged.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

In reports dated May 2 and September 17, 2012, Dr. Randolph listed a history that appellant left his federal employment in 2000. He stated that the February 2, 2000 audiogram revealed 0 percent hearing loss in the right ear and 11.25 percent in the left ear or a binaural hearing loss of 1.88 percent. Dr. Randolph addressed how hearing loss due to noise exposure occurs at the time of noise exposure and does not get worse at a later date because of past noise exposure. Appellant's hearing loss increased in severity after he left federal service, resulting in his current bilateral hearing loss of 9.69 percent. Dr. Randolph found that the increase in appellant's hearing loss between 2000 and April 30, 2012, the date of his audiogram, was due to factors other than his federal noise exposure. He diagnosed bilateral sensorineural loss as a result of appellant's federal workplace noise exposure. Hearing aids were recommended.

OWCP properly referred the medical evidence to its medical adviser for a rating of permanent impairment in accordance with the A.M.A., *Guides*.¹⁰

On January 17, 2013 OWCP's medical adviser reviewed the audiograms of record and agreed with Dr. Randolph that the February 2, 2000 audiogram, which was closest to the date of appellant's federal retirement, was the most appropriate to use to rate impairment. He concurred with Dr. Randolph that hearing loss due to noise exposure occurs at the time of noise exposure and does not get worse at a later date because of past noise exposure.

⁴ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* 250 (6th ed. 2008).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ C.C., Docket No. 11-731 (issued October 11, 2011).

¹⁰ See *Hildred I. Lloyd*, 42 ECAB 944 (1991).

In *Kenneth W. Morgan*,¹¹ the Board stated that, in general, a noise-induced sensorineural hearing loss does not progress after exposure to hazardous occupational noise ceases. However, the Board did not enunciate this principle as a general rule but based the particular decision on the opinions of the physicians of record. In *Adelbert E. Buzell*¹² and *M.H.*¹³ The Board cautioned against blanket, unrationalized statements that hearing loss does not progress following cessation of hazardous noise exposure. In the present case, Dr. Randolph stated that between the year 2000 and 2012 appellant's hearing loss increased in severity due to factors other than his federal employment. There is no medical opinion of record that appellant's hearing loss between the years 2000 and 2012 increased due to noise exposure in his federal civilian employment. The Board therefore finds that OWCP properly utilized the February 2, 2000 audiogram for evaluation of appellant's employment-related hearing loss.

OWCP's medical adviser applied the findings of the February 2, 2000 audiogram to rate 0 percent right monaural loss, 11.25 percent left monaural loss and 1.88 percent binaural loss, as had Dr. Randolph.¹⁴ He averaged appellant's right ear hearing levels of 5, 5, 10 and 70 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 90 and averaged 22.5. The medical adviser then subtracted a 25-dB fence and multiplied by 1.5 to find 0 percent right monaural hearing loss. He then averaged appellant's left ear hearing levels of 5, 5, 35 and 85 dB at 500, 1,000, 2,000 and 3,000 Hz, which totaled 130 and averaged 32.5. The medical adviser then subtracted a 25-dB fence, he multiplied the remaining 7.5 balance by 1.5 to calculate 11.25 percent left monaural hearing loss. He then calculated 1.88 percent binaural hearing loss by multiplying the lesser right ear loss of 0 percent by 5, adding the greater 11.25 percent left ear loss and dividing this sum by 6. The medical adviser agreed that appellant's hearing loss was caused by his occupational noise exposure and recommended hearing aids. The Board finds that he applied the A.M.A., *Guides* to rate appellant's impairment. OWCP properly relied on the medical adviser's opinion to find that appellant sustained 11 percent hearing loss in the left ear.¹⁵ The Board notes that OWCP policy is to round the calculated percentage to the nearest whole number.¹⁶ Thus appellant's left ear hearing loss should be rounded to 11 percent.

A schedule award provides for payment of compensation for a specific number of weeks as prescribed by the statute.¹⁷ FECA provides that a claimant is entitled to 52 weeks of compensation for a 100 percent loss of hearing in one ear and 200 weeks compensation for 100 percent hearing loss in both ears. Multiplying 1.88 percent by the 200 weeks provided for binaural hearing loss results in a total of 3.76 weeks of compensation. Multiplying 11 percent by 52 weeks provided for monaural hearing loss results in a total of 5.72, the number of weeks

¹¹ 28 ECAB 569 (1977).

¹² 34 ECAB 96 (1982).

¹³ Docket No. 09-1689 (issued March 10, 2010).

¹⁴ *Id.*

¹⁵ See *Linda Beale*, 57 ECAB 429 (2006).

¹⁶ See *T.H.*, Docket No. 12-764 (issued February 26, 2013).

¹⁷ 5 U.S.C. § 8107.

OWCP authorized for payment of appellant's schedule award. As payment for the left ear monaural hearing loss results in greater compensation to appellant than the binaural hearing loss rating, the Board finds that OWCP properly determined the number of weeks of compensation.

In its January 28, 2013 decision, OWCP stated that appellant was entitled to \$4,999.48 in schedule award compensation for the period February 2 to March 13, 2000. This was based on multiplying appellant's weekly pay rate of \$1,165.38 by the 75 percent augmented compensation rate which totaled \$874.04, resulting in a payment of \$4,999.48 for 5.72 weeks of compensation.¹⁸

With respect to the specific period for payment of the 5.72 weeks of compensation, this is based on the date of maximum medical improvement which occurred on February 2, 2000, based upon the medical adviser's opinion. The determination of the date for maximum medical improvement ultimately rests with the medical evidence.¹⁹ It is usually considered to be the date of the evaluation by the physician who is accepted as definitive by OWCP.²⁰ The Board finds that OWCP properly determined the period of the award for 5.72 weeks from February 2 to March 13, 2000.

On appeal, appellant asserts that he is entitled to a greater award as his accepted hearing loss was for both ears and affected him permanently. As noted, OWCP properly applied the appropriate grading schemes of the A.M.A., *Guides* in rating his accepted bilateral hearing loss, resulting in a 5.72 week schedule award period commencing on February 2, 2000, the date of maximum medical improvement.²¹ Appellant did not submit probative medical evidence establishing a greater percentage of permanent impairment which would have resulted in a longer payment period.

Appellant may request an increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment at any time.

¹⁸ The Board notes that on appeal appellant stated that he should be compensated the full amount based on his hearing loss and complications associated with his hearing loss. The basic rate of compensation paid under FECA is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents, as in this case, as defined in FECA, the employee is entitled to have his or her basic compensation augmented at the rate of 8 1/3 percent for a total of 75 percent of monthly pay. 5 U.S.C. § 8110(b). The number of weeks of compensation for a schedule award is determined by the compensation schedule found in section 8107(c) of FECA. 5 U.S.C. § 8107(c); *Dennis R. Stark*, Docket No. 05-1826 (issued January 10, 2006).

¹⁹ *L.H.*, 58 ECAB 561 (2007).

²⁰ *Mark Holloway*, 55 ECAB 321, 325 (2004).

²¹ The medical evidence, as explained, establishes that appellant was properly awarded 5.72 weeks of compensation based on his 11 percent hearing loss in the left ear. This results in a greater compensation amount than 1.88 percent loss of hearing in both ears.

CONCLUSION

The Board finds that appellant has not established that he sustained greater than 11 percent hearing loss to the left ear in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board